

Serial No.: 10/647,780  
Art Unit: 3616  
Examiner: FLEMING, Faye M.  
Page 4 of 8

### REMARKS

By this amendment, claim 29 has been amended. No new matter has been added.

Claims 28-36 remain pending in the application. Reconsideration and allowance of all of the claims is respectfully requested in view of the following remarks.

#### In regard to Claim Rejection Under 35 USC § 112

The Examiner has rejected claim 29 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner has indicated that the term "the tires" recited in claim 29 has insufficient antecedent basis.

The Applicants respectfully submit that this rejection has been addressed and overcome by the present amendment.

Claim 29 as amended now recites an ATV "wherein each of the at least four wheels includes a tire". The term "each of the tires" recited in claim 29 now has proper antecedent basis. As such, the Applicants believe that claim 29 is now in full compliance with 35 U.S.C. § 112 and the Examiner's rejection should be withdrawn.

#### In regard to Claim Rejection Under 35 USC § 103(a)

The Examiner has rejected claims 28-36 under 35 U.S.C. § 103(a) as being unpatentable over Haynes (U.S. Patent No. 6,105,721) in view of Katsuoka (U.S. Patent No. 4,527,831), further in view of Frank (U.S. Patent No. 5,026,119). The Applicants respectfully disagree.

The Examiner's attention is directed to the following element of claim 28:

the front axis and the rear axis defining therebetween a wheelbase between 52 and 72 inches;

Haynes does not teach at least the above element of claim 28. Referring first to lines 7-9 of column 1 of Haynes, Haynes relates to "an accessory mounted on top of an ATV to allow the use of a stationary ATV as a hunting stand". Referring now to lines 8-11 of column

MONTREAL:585536.1

Serial No.: 10/647,780

Art Unit: 3616

Examiner: FLEMING, Faye M.

Page 5 of 8

2 of Haynes, "These and other objects of the present invention are accomplished through the use of an accessory comprised primarily of square metallic tubular members secured to the top of an ATV." It is apparent that the invention of Haynes is designed to be mounted on a standard ATV, and standard ATVs do not have wheelbases within this range. Haynes makes no mention of any modification of the body of the ATV to which the hunting stand accessory is to be affixed. In particular, Haynes makes no mention of altering the wheelbase or any other dimensions of an ATV. Therefore, Haynes does not disclose the above element of claim 28.

For its part, Katsuoka fails to remedy the above noted defect with respect to Haynes. Referring to lines 6-8 of column 1 of Katsuoka, Katsuoka relates to "a motorcycle and more particularly to an improved seating arrangement for such a vehicle". In particular, Katsuoka teaches a standard motorcycle to which is affixed a seating arrangement including a passenger scat, wherein the height of the passenger seat is adjustable. Referring to lines 47-61 of column 1, Katsuoka teaches that

a motorcycle embodying this invention includes a frame assembly, indicated generally by the reference numeral 11. An engine and transmission assembly 12 is supported by the frame assembly 11 in a known manner. A front fork 13 rotatably journals a front wheel 14 and may be steered in a known manner by means of handlebar assembly 15. A suspension system 16 supports the driven rear wheel 17 also in a known manner.

A fuel tank 18 is supported at the forward end of the frame assembly 11 immediately beneath the handlebar 15. To the rear of the fuel tank there is supported a seat assembly constructed in accordance with this invention, which seat assembly is identified generally by the reference numeral 19.

As such, Katsuoka teaches a motorcycle constructed in a known manner, and does not suggest any modifications to be made to the frame thereof. The remainder of Katsuoka describes the construction of the seat assembly, and provides no further details as to the construction of the motorcycle body. In particular, Katsuoka makes no mention of altering the wheelbase or any other dimensions of an ATV or any other vehicle.

Irrespective of whether or not it is proper to combine the teachings of Haynes and Katsuoka, which is not admitted, and reserving the right to argue thereagainst, the

MONTREAL:583536.1

Serial No.: 10/647,780

Art Unit: 3616

Examiner: FLEMING, Faye M.

Page 6 of 8

combination of Haynes and Katsuoka does not teach or suggest the above element of claim 28. Even if it were possible to modify the ATV of Haynes by adding thereto the seating arrangement of Katsuoka, the resulting combination would be no more than a conventional ATV of standard dimensions having a passenger seat attached thereto, which the Applicant has described in paragraph [0010] of the Application as prior art. Referring to paragraph [0010] of the present application:

As illustrated in FIGS. 12A and 12B, a conventional after-market passenger seat 1100 was developed in an attempt to provide a seat for the passenger 1020 that can be attached to a conventional one-person ATV like the ATV 1000. While the passenger seat 1100 provides more longitudinal space for the passenger 1020, it suffers from many of the same deficiencies encountered when the passenger 1020 rides on the ATV 1000 without a passenger seat 1100 (as shown in FIGS. 11A and 11B). Furthermore, the seat 1100 creates additional problems for the ATV 1000 and riders 1010, 1020.

Therefore, because both Haynes and Katsuoka teach affixing accessories to vehicles of standard dimensions, and provide no teaching of altering said dimensions, the combination of these two references cannot teach or motivate "An ATV ... the front axis and the rear axis defining therebetween a wheelbase between 52 and 72 inches".

Irrespective of whether or not it is proper to combine the teachings of Frank with either or both of Haynes and Katsuoka, which is not admitted, and reserving the right to argue thereagainst, the addition of Frank does not remedy this defect. Frank relates to a "back support for motorcycles" (title). It is apparent from lines 23-25 of column 3 of Frank that a "back support for a motorcycle rider according to the invention ... is mounted to a conventional motorcycle seat", and as such Frank teaches a motorcycle of conventional construction and does not teach or suggest modifying the dimensions of an ATV or of any other vehicle.

Furthermore, the Examiner has not established that varying the wheelbase of a two-passenger ATV is a mere design choice. Referring to section 2144.05 II B of the MPEP, "A particular parameter must first be recognized as a result-effective variable, i.e. a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)". Neither Haynes, Katsuoko nor Frank, alone or in

MONTREAL:383336.1

Serial No.: 10/647,780

Art Unit: 3616

Examiner: FLEMING, Faye M.

Page 7 of 8

combination, indicate that the wheelbase of an ATV is recognized in the prior art as a result-effective variable to achieve any particular result. For this reason, the Examiner has not demonstrated that the recitation of this variable in the present claims is simply the determination of the optimum or workable range thereof which could be characterized as routine experimentation.

Therefore, the Applicants submit that, even if there were a motivation to combine the teachings of Haynes, Katsuoko and Frank, this combination would not teach every element of claim 28. As such, the Examiner is respectfully requested to withdraw her rejection of claim 28, and claims 29-36 depending therefrom.

MONTREAL:583536.1

Serial No.: 10/647,780  
Art Unit: 3616  
Examiner: FLEMING, Paye M.  
Page 8 of 8

In view of the above remarks, the Applicants respectfully submit that all of the currently pending claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in a better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Jonathan D. Cutler, Reg. No. 40,576  
OSLER, HOSKIN & HARCOURT LLP  
Attorneys for the Applicant

March 21, 2006

OSLER, HOSKIN & HARCOURT LLP  
1000 de la Gauchetière St. West  
Suite 2100  
Montréal, Québec H3B 4W5  
Canada

Tel. (514) 904-5624  
Fax. (514) 904-8101

MONTREAL-583536.1